THE

LAW SCHOOL

OF

HARVARD COLLEGE.

By JOEL PARKER.

"Which I wish to remark —
And my language is plain —
That for ways that are dark,
And for tricks that are vain,
The heathen Chinee is peculiar:
Which the same I would rise to explain."
— *Truthful James in the Overland Monthly.*

NEW YORK:
PUBLISHED BY HURD AND HOUGHTON,
Cambridge: Riverside Press.
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"So fight I, not as one that beateth the air."

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MATTERS of personal privilege are said to be always in order, and personal privilege is often personal explanation.

This paper asks attention to some matters pertaining to the history of the Law School of Harvard College, which must necessarily partake somewhat of that character.

I am impelled to this course by two publications, appearing near the same time in the month of October, — the first a short article in the American Law Review, relating to the School, and the other a report of the Committee of the Overseers to the Board, upon the same subject.

I have not inquired who was the author of the article in the Review. The responsible parties are the editors of that periodical, which, in its Summary of Events, speaks in this wise: —

"HARVARD UNIVERSITY. LAW SCHOOL. — For a long time the condition of the Harvard Law School has been almost a disgrace to the Commonwealth of Massachusetts. We say 'almost a disgrace,' because, undoubtedly, some of its courses of lectures have been good, and no law school of which this can be said is hopelessly bad. Still, a school which undertook to confer degrees without any preliminary examination whatever, was doing something every year to injure the profession throughout the country, and to discourage

[1] "At the instance of the Law Faculty, the Corporation have passed a declaratory vote in order to correct a prevalent error respecting the name by which this department of the University is known." . . . . "The true and legal name of the School is not, as many will have it, the Dane Law School, but 'The Law School of Harvard College.'" — *President Walker's Report to the Overseers*, December, 1859.

real students. So long as the possession of a degree signified nothing except a residence for a certain period in Cambridge or Boston, it was without value. The lapse of time insured its acquisition. Just as a certain number of dinners entitled a man in England to a call to the bar, so a certain number of months in Cambridge entitled him to a degree of Bachelor of Laws. So long as this state of things continued, it was evident that the school was not properly performing its function. We were glad to learn, therefore, that the old system has been abandoned, and are glad to find convincing evidence of the fact in a circular just issued by the Faculty. The circular states that 'The degree of LL. B. will be conferred upon students who shall pass satisfactory examinations in all the required subjects, and in at least seven of the elective subjects, after having been in the school not less than one year.' The intention is, that the seven required subjects should occupy the student fully during one year; the seven electives are meant to fill a second year. The required studies are designed to serve as an introduction to the electives. Equivalents will be accepted from students who offer themselves for examination upon subjects which they have studied elsewhere. Students who are not candidates for a degree can avail themselves of the advantages of the school to whatever extent they see fit." . . . . After stating the names of the Instructors the writer adds, "The learning and ability of these gentlemen warrant us in predicting that their labors will make the Harvard Law School what it ought to be."

Had the author of the article been content to commend the new order of things, without disparagement of the old, or had the words of censure appeared to be a mere incidental, careless utterance, without intention to disparage, the matter might be passed without notice. But the declaration, that "for a long time the condition of the Harvard Law School has been almost a disgrace to the Commonwealth of Massachusetts," stands at the head and front of the article; and the phraseology, although not very clear or happy, seems to have been deliberately chosen as particularly expressive of the idea intended to be conveyed; inasmuch as the writer repeats it, in order to show that that was just what he intended to say, — no more, no less. He did not mean to say that the School had been "hopelessly bad." "Still, a school which undertook to confer degrees without any preliminary examination whatever, was doing something every year to injure the profession throughout the country, and to

discourage real students." "So long as this state of things continued, it was evident that the school was not properly performing its function." But "the learning and ability of the present corps of instructors warran[redacted]the prediction that their labors will make the school what it ought to be."

These utterances present grave charges against the School generally, against the rules upon which it has been conducted ever since it was established, and, by implication at least, against some of its previous Instructors, who, it must be supposed, did not do what it is predicted the present will perform.

If the writer knew whereof he was discoursing he understood that the learning, ability, labors, or powers of the corps of instruction do not prescribe the rule for conferring degrees. The natural inference, therefore, from all that is said, is, that there has been something beyond the degree to impeach the School.

Whoever may be the author, it is put before that portion of the legal profession who read the Law Review, with the endorsement of the editors of that magazine, — two young men, it is understood, who, about four years since, consented to receive the honors of the School in the shape of a degree of Bachelor of Laws, without insisting upon a preliminary examination to show that they deserved them. The extent of the injury to the Profession, thereby, is, perhaps, not yet ascertained.

It will not do to assume that the plea of the man, who, being sued for slander, set up as a defence, that he was well known, and therefore no injury could arise from anything which he had said, can be applied to this case, and so the matter appears to admit of, if not to require, some notice.

It is difficult, under the circumstances, to say which is most prominent in the article, the conceit which dictated it, or the entire lack of courtesy manifested by it. In fact, the two are so harmoniously blended, that they cannot be separated without impairing the effect derived from both in conjunction.

But the conceit and the ill manners are comparatively unimportant. A question, in regard to the truthfulness of the assertions, throws other considerations entirely into the shade, and it is proposed to examine them, in this respect, at the present time.

Having held the Royall Professorship for twenty years, terminating in 1868, and having been during that time, with the exception of a single term, Senior Professor, and thus, by the statutes, the head of the department, I may naturally be supposed to have some interest in the reputation of the school, to say nothing of my own. Others have an interest also. The other members of the Corps of Instruction during that time,[1] and the relatives of those who were members previously, and who are now all deceased,[2] may perhaps be supposed to feel some interest in it, unless they deem it utterly beneath their notice. The members of the Corporation, also, from the organization of the school to the close of the academic year of 1869–70, are, so far as appears, all embraced in the "long time" spoken of, and had some interest in the subject. If the School has been for "a long time, almost a disgrace to the Commonwealth," it has been an entire disgrace to the Corporation to permit such a state of things. It may be added, that all the past members of the School — especially those who have received this discreditable degree, conferred without preliminary examination, — cannot take much pride in their membership, if its character has been what is thus represented.

How others may have been affected by this slander, I do not know. For myself, along with a very deep sense of the injustice done to the Institution, I am inclined to mingle a degree of gratitude to the writer, as the language quoted seems to indicate that it may be expedient to say a few words respecting the School and my connection with it, which would otherwise never have been written.

It may be said — it has been said, — "Why take any notice of such an article; it will not harm you or the School. Quite true in reference to those who have any knowledge of the subject. With them, the reputation of the School and of its past Instructors, was settled one way or the other before this ac-

[1] The other Instructors were Hon. Theophilus Parsons, Dane Professor from August 1848, during the residue of the time; Hon. Franklin Dexter, Lecturer 1848–49; Hon. Luther S. Cushing, Lecturer 1848–51; Hon. Frederick A len, University Professor 1849–50; Hon. Edward G. Loring, Lecturer 1852–55; Hon. Emory Washburn, Lecturer 1855–56, University and Bussey Professor from 1856; Hon. Richard H. Dana, Jr., Lecturer 1866–68.

Hon. Henry Wheaton and Hon. Edward Everett, appointed Lecturers on the Law of Nations in 1848 and 1854 respectively, died without taking their seats.

[2] Stearns, Story, Ashmun, Greenleaf, and Kent.

cusation came to defame it. But there are others who will see the charge, and who do not know; some of whom may, perhaps, be reached by a refutation, even if others cannot be.

Besides, I have had good occasion to be assured, since I commenced this paper, how few persons are to be found, after the lapse of a single generation, who have personal recollections of Law Schools, or even very definite traditional knowledge; while the few items which have been committed to type and paper, in Town Histories, or brief biographical memoranda, and even newspaper paragraphs, furnish nearly all the accessible information, and must be taken for truth.

If other materials now exist, in this case, for the formation of a correct judgment, this article, if it is now permitted to stand without contradiction, may, in a few years, be regarded as an important allegation, influencing the opinion which is to be formed respecting the state of the School, prior to its publication; and if, perchance, half a century hence, some plodding legal antiquary, raking among the rubbish (which is the appropriate occupation of an antiquary), should unearth the Law Review of October last, and find, among its mouldy pages, this article on the Law School, and an inquiry should in that way be raised, in the Antiquarian College, how it could be possible that such a state of things could be tolerated and continued, and curiosity should thereupon direct an investigation of the College catalogue, to ascertain the names of the Instructors, and the corporate members who suffered it to fall into such apparent disrepute; I prefer, that in the further inquiries which it is to be hoped will result from this pursuit of useful knowledge, the investigators may find, already collected, the facts which will serve to prove the falsity of the charge, and to erase from their minds the memory of this ink-spot. It can hardly be expected that their zeal and perseverance will be sufficient to induce them to collect the scattered materials which furnish the proofs.

The Law School of Harvard College is not the oldest Law School in the United States, but it is probably the first which was connected with a literary institution having authority to confer degrees.

In the catalogue of law schools, in the American Almanac, a Law department in William and Mary College, Virginia, is

stated to have been founded in 1782; but I have not been able to find anything farther respecting it, in that century. It may have furnished lectures on law to the college classes, or some of them, but it can at that time hardly have had the character of a Law School.

The earliest school for legal instruction, in this country, so far as I am at present advised, was that at Litchfield, Connecticut, founded in 1784 [in 1782, it is stated in a catalogue published in 1831], by Tapping Reeve, Esq., afterwards associate and chief justice of the Superior Court of that State. He was sole principal until 1798, when, on his appointment to the Bench, Hon. James Gould became associated with him. Judge Reeve died in 1823, at an advanced age, having retired from the school in 1820; from which time Judge Gould continued it alone, for several years; after which Jabez W. Huntington, Esq., became an assistant. This School had great and deserved celebrity. At the Harvard Law School celebration in 1851, Hon. Charles G. Loring spoke of his attendance at the Litchfield School, in 1813, then at its zenith, when there were "more than sixty students, from all parts of the country, every State in the Union being there represented." The catalogue of 1831 shows fifty-four students in 1813, the largest number in any single year. It was discontinued in 1833, in consequence of the failing health of Judge Gould, who died in 1838, having had on its roll over one thousand students, many of whom afterwards became eminent in political and judicial life. Probably no Law School has had — perhaps I may add ever will have — so great a proportion of distinguished men on its catalogue, if for no other reason, because attendance upon a Law School was then the rare exception, an advantage attained in general only by very ambitious young men, and because there was then much less competition for the offices and honors to which they aspired.

In an "advertisement" prefixed to the general catalogue of the school, published by the students in 1831, it is said, "According to the plan pursued by Judge Gould, the law is divided into forty-eight Titles, which embrace all its important branches, of which he treats in systematic detail. These Titles are the result of Thirty years' severe and close application. . . . . The lectures which are delivered

every day, and which usually occupy an hour and a half, embrace every principle and rule falling under the several divisions of the different Titles. These principles and rules are supported by numerous authorities, and generally accompanied by familiar illustrations. Whenever the opinions upon any point are contradictory, the authorities in support of either doctrine are cited, and the arguments advanced by either side are presented in a clear and concise manner, together with the Lecturer's own views upon the question. In fact, every ancient and modern opinion, whether overruled, doubted, or in any way qualified, is here systematically digested. These lectures, thus classified, are taken down in full by the students, and after being compared with each other, are generally transcribed in a more neat and legible hand. . . . . These notes thus written out are, when complete, comprised in five large volumes," &c.

It is evident that some allowance must be made, in regard to the extent and completeness of the work, even at that day. But this account serves to confirm, — what I had before understood, — that Judge Gould read from his manuscript, pausing for the students to write out the principle or rule stated; which was very well at that day, when there were few elementary treatises, but no one would commend it for adoption at the present time, when text books have multiplied *ad infinitum*. And at this day no one, within an hour and a half each day of a whole course completed in fourteen months, including two vacations of four weeks each, could fairly begin to do what it is thus said was accomplished.

Mr. Huntington held examinations every Saturday, upon the lectures of the preceding week, consisting "of a thorough investigation of the principles of each rule," with "frequent and familiar illustrations, and not merely of such questions as can be answered from memory without any exercise of the judgment."

A Moot Court was held, at least once in each week.

The precise method of instruction by Judge Reeve, I have been unable to learn, but infer, from such information as I have, that his lectures were accompanied by more of colloquial explanation.

In an account of the organization of the Law School of

the New York University, published in the Law Reporter, September, 1838, it is stated, that no "institution of a similar character ever existed in that State, than that which was under the charge of the learned Chancellor Kent, from 1793 to 1798, it having then been interrupted by the appointment of that distinguished jurist to the bench."

From the minute details respecting the organization of the new school, it would seem that the article must have had a New York origin, and that the writer should have had full means of knowledge respecting the subject-matter; but it appears that there must be some mistake. I can find no trace of such a school. The Chancellor before his accession to the Bench was appointed Professor of Law in Columbia College, and may have delivered lectures on law to the college students; but the College seems to possess no evidence of a Law School there at that time. After his retirement from the Bench in 1823, the Chancellor, as Professor of Law, delivered lectures in the College, which were the foundation of his celebrated Commentaries, but there was no Law School at that time. The Catalogue of the Institution dates the existence of its Law School from 1858, without any suggestion that there had been any such school there previously.

The Law School which for a few years flourished at Northampton, in this State, had its origin in the private enterprise of Hon. Elijah H. Mills, a counsellor in extensive practice, and Senator in Congress; and of Hon. Samuel Howe, a judge of the Court of Common Pleas. Messrs. Mills and Howe had been partners in practice, before the appointment of the latter to the Bench in 1821. In 1823, they commenced this School. Mr. Mills delivered some lectures, but his other avocations, and his ill health, prevented his giving much attention to it. The greater part of the instruction was by Judge Howe, who had been a pupil in the Litchfield School.

In 1827, John Hooker Ashmun, Esq., then a partner with Mr. Mills, was associated with Judge Howe in the School; and after the death of the latter, in 1828, continued it until his appointment as Royall Professor, in the School of Harvard College, in 1829. There were between sixty and seventy students in it, during the short period of its existence.

The methods of instruction were lectures read by Judge

Howe, of which the students were permitted to take copies, oral lectures of which they might take notes, and recitations.

Mr. Ashmun heard recitations. "Coke upon Littleton was thoroughly studied." Mr. Webster said of this, as a text-book, "A boy of twenty, with no previous knowledge on such subjects, cannot understand Coke. It is folly to set him upon such an author. There are propositions in Coke so abstract, and distinctions so nice, and doctrines embracing so many conditions and qualifications, that it requires an effort not only of a mature mind, but of a mind both strong and mature, to understand him. Why disgust and discourage a boy by telling him he must break into his profession through such a wall as this." — Nevertheless Coke on Littleton very regularly succeeded Blackstone, as the second text-book of that day.

Next in order comes the Law School of Harvard College.

The earliest endowment of which this School has the benefit is derived from the will of Hon. Isaac Royall, a gentleman who resided in Charlestown before and up to the time of the Revolution, and who was a representative and councillor for many years under the colonial government. He did not sympathize with the Revolution, but took no active measures against it. Leaving the country for Halifax, and then proceeding to England, his estates were taken possession of under the confiscation acts, of which he complained bitterly, declaring that his sailing for Halifax was not voluntary, and that he had been prevented from returning solely by ill health. That he did not permit his indignation to destroy his attachment to the country, was made manifest by his will, executed in 1779, in which, along with other bequests to public objects here, he devised to Harvard College more than two thousand acres of land, to be appropriated "towards the endowing a Professor of Law in said College, or a Professor of Physic or Anatomy, whichever the Corporation and Overseers shall judge best for its benefit," — with power to sell the lands, and devote the income of the money to the purpose.

The land was sold. In 1815 the Royall Professorship of Law was established on this foundation; and the next year Hon. Isaac Parker, Associate Justice of the Supreme Court, was chosen Professor. By some mismanagement, as I have heard, the nature of which I did not learn, the fund amounted

to less than $8,000, the income of which, $400, Judge Parker received as his salary. But his duties required him, I think, only to deliver fifteen lectures to the Senior Class. He resigned his Professorship in November, 1827.

In May, 1817, on the suggestion of Judge Parker, it is said, the Law School was established, and Hon. Asahel Stearns, a counsellor of eminence, was elected University Professor of Law. The School was placed under his charge. Judge Parker appears to have had no connection with it, except that the students were admitted to his lectures to the Senior Class. The compensation to Professor Stearns was the tuition fees paid by the students. It was a School of small beginnings, its first class numbering three; and it is not surprising that it did not flourish. The School at Litchfield was then in high repute, and had long before attracted the few persons from this section who felt able and willing to attend a School of the Law. Instruction in that mode was an anomaly, lawyers' offices being in most instances the resort for a novitiate. The School at Northampton was a rival, with a distinguished and popular advocate as one of its instructors, nominally, and to some extent, actually, — and with a Judge as the other instructor, enthusiastic, and encouraged by success. Perhaps I may add that some of the law offices in Boston and elsewhere have always welcomed students, on account of the assistance they render in copying papers, and other office labors. There were no funds. Two rooms of medium size, one of which contained a small library, — with the privilege of hearing the lectures on law to the Seniors, — was the endowment. It is not wonderful that Professor Stearns was discouraged, — if he was not disgusted. He resigned in April, 1829.

In June of that year the Corporation was enabled to reorganize the School on a better endowment.

Hon. Nathan Dane, a learned counsellor at law in Beverly, and a gentleman of distinction otherwise, having been for three years a delegate in Congress under the Confederation, and on the committee which reported the ordinance for the government of the Northwestern Territory, — said by some to have been its author, — made a donation of *ten thousand dollars*, the income of which, and of such other funds as he might thereafter add, was to be appropriated to the endowment of a Pro-

fessorship of Law. He prescribed the duties of the Professor, in part, which were "to prepare and deliver and to revise for publication a course of lectures on the five following branches of Law and Equity, equally in force in all parts of our federal republic, namely, the Law of Nature, the Law of Nations, Commercial and Maritime Law, Federal Law, and Federal Equity, in such wide extent as the same branches now are, and from time to time shall be, administered in the Courts of the United States." And he requested that Mr. Justice Story might be appointed the first Professor. The donation was accepted, and the appointment made accordingly. He afterwards added *five thousand dollars* to the fund, in the manner hereafter stated.

Mr. Ashmun, of the Northampton School, was immediately afterwards appointed Royall Professor. It is not necessary to suppose that this appointment was made with a design of putting an end to that School, because the eminent qualifications of Mr. Ashmun fully justified the selection for other and better reasons. But the Northampton School terminated then and there.

The new Professors were formally inaugurated in August, 1829, and the School, with these more encouraging prospects, entered on its new life, with twenty-four students in its first year.

Mr. Ashmun's connection with the School was closed, by his death, in April, 1833, and Professor Simon Greenleaf, a member of the bar in Maine, distinguished for his critical discrimination of legal principles, and at that time reporter of the decisions of the Supreme Court, was appointed to succeed him. Judge Story held the office of Dane Professor until his decease in 1845. Professor Greenleaf, who had been appointed Dane Professor on the death of Judge Story, resigned July, 1848.

Hon. William Kent, who had been Professor in the Law School of the New York University, was elected Royall Professor in 1846, but held the office only one year. From his resignation until the spring term of 1848, the school was in the hands of Professor Greenleaf, with some lectures by two or three young men who had recently been members of it.

In 1832, a building was erected for the accommodation of the School, and called "Dane Law College." It is the part

of the present Dane Hall occupied for offices and by the text-books.[1] That part which contains the general library, and the lecture-room, was added in 1844–45.

From 1829 to 1848, with the chairs of Instruction and Government filled by such eminent jurists, with the accommodations provided by the new Hall and its addition, and with a library increasing at such a rate that in a few years the like was not to be found in the country, — we might confidently suppose that the School had been a success; and it was thought, during that period, and for a "long time" afterwards, that it was so.

Its numbers increased slowly, with occasional falling off until 1837, from which time, having become more extensively known, the increase was steady and rapid, until at January term, 1845, the number of students was *one hundred and sixty-five*, the highest number prior to 1848.

Up to the academic year 1838–39 there were three college terms in each year, and the attendance from April, 1832, according to the Steward's books, ranged from *eleven* at December term 1832, and *twenty-six* and *twenty-seven* in 1834 and 1835, to *fifty-three* in December, 1833, *fifty* in December, 1835, and *sixty-six* in December, 1837, falling again to *forty-six*, April term 1838; the average number during that period being *forty-one* and a fraction.

From January, 1839, to January, 1848, there being two terms in each year, the lowest numbers were *sixty-nine*, and *seventy-seven*, near the commencement of the period, — the highest *one hundred and sixty-five*, and *one hundred and fifty-one*, in 1845–46; the average attendance being *one hundred and twelve* and a fraction.

The method of instruction by Professor Ashmun was in general by recitations, with explanations where necessary; that of Judge Story by lectures, interspersed with occasional questions. I have understood that sometimes he examined a half dozen or so of students, whose names were given in for examination. He did not hear recitations. Professor Greenleaf followed, in general, the method of Judge Story, with somewhat more of precision in it. Whatever may have been the extent

[1] Mr. Dane aided in the erection of this part of the building, by a loan. See *post*.

and result of recitations and examinations, the degree was in no way dependent upon them.

Moot courts were held every week, and the usual aid and assistance given on inquiries by the students. A list of books for a course of study and reading was made up, which was enlarged from time to time. It cannot strictly be said that this course was prescribed, for nothing was exacted. The annual reports on the School, prepared by the Professors (and which the President incorporated into his report to the Overseers), from 1830 to 1837, after stating the number of the students, closed uniformly with these words: "Their attendance upon the exercises has been hitherto wholly voluntary, and has been marked by a punctuality and by a degree of advancement highly satisfactory. The opportunity of pursuing the study of the profession at the school is considered as a privilege, and the students themselves are understood to have been well satisfied with the arrangements."

From 1837 to 1846, the reports contained the same statement, with the interpolation after the word "privilege," of these words, "which is more and more highly estimated as its value becomes extensively known." The reports of the President being regularly printed, and distributed among those concerned in the government of the Institution, and to others also, and no objection appearing to have been made from any quarter, here is plenary proof that the policy which adopted the voluntary principle as the basis of government and instruction, was, during all these years, not only satisfactory, from the first, to those for whose benefit the School was designed; that the advantages of the School were more and more appreciated the more they became known; and that so far as appears, those who had the immediate administration of its affairs, and all others who were interested, were entirely satisfied with its success.

The Law Reporter for October, 1838, said of it: —

"The prosperity of this school is, we believe, unexampled in this country. Ever since its first formation it has increased in popularity and usefulness, and under the management of its present professors, its success has been wonderful."

In the report of the School for 1837–38, it is noted that the

students were from eighteen different States of the Union; the next year they were from nineteen; the next twenty-two; and after that "from nearly all the States in the Union;" and in a notice of the School, in the Law Reporter for November 1843, it is said, that, —

"It is in conformity with the desires of the distinguished professors that the Law School is not regarded as a local institution teaching the law of a particular state, but as national in its character and dedicated to those great rules and principles of jurisprudence which are of equal authority in each and all of the States."

If further evidence were desired respecting its character, and of the high estimation in which it was held, it may be found in a report of the proceedings of a Law School Festival, in August 1845 (8 Law Reporter, 145), in which distinguished lawyers, judges, and statesmen, united to do it honor.

Here I pray that it may be noted, that I have traced the School from its inception to the year 1848, and I confidently appeal to my readers to join me in the conclusion that it had then faithfully performed its duty and exceeded the most sanguine anticipations of its friends. I shall do no injustice to any other in saying, that at the opening of that year it stood among the law schools then in existence, first, as I believe, in date, — first in numbers, — first in success, — and, of course, first in usefulness. It was then an Institution in which any State might take a just pride. There was then no learned Dogberry to consign it "into everlasting redemption," by an allegation that it was "almost a disgrace." Thus far, at least, the past is secure.

My connection with the School arose from the unsolicited and unexpected act of the President and Fellows, in August, 1847, tendering me the chair of the Royall Professorship, then made vacant by the resignation of Professor Kent, — an offer which was promptly declined, — afterwards, on urgent representations by President Everett, accepted, and the appointment confirmed by the unanimous vote of the Board of Overseers. But I had no experience, nor even knowledge of the details of the service to be performed, as the President well understood; and on taking my seat, at the March term, 1848, having had no leisure for any preparation whatever, I encountered difficulties which seemed formidable, and were certainly embarrassing.

When I entered upon my duties I found that the topics which

formed the subject matter of the lectures for a two years' course, had been divided between Professors Greenleaf and Kent, the year before; that Professor Kent's course devolved on me; and to my dismay, Shipping and Admiralty was upon my list for that term. My residence in the interior of a State which had had but one port, the business of which was nearly all transacted in Boston, had given me no occasion to become acquainted with that branch of the law, and I tried in vain to escape by an exchange. Professor Greenleaf's answer that he was then in the middle of his topics for the course, showed that he could not comply with my request. So, frankly stating the difficulty, I told the students I would study the text-book with them.

But there was another difficulty, of a more general character. It was understood to be my duty to deliver a certain number of lectures, and to hold a certain number of Moot Courts, beside taking a share of the general superintendence and management of the School. I had listened to one lecture and the half of another, by Professor Greenleaf, in which with great ease, he expounded the principles of the branch of the law then under consideration, occasionally interspersing questions to the students. How far he followed, directly, the text-book before him, was not apparent.

The practical difficulty which met me, in the outset, arose in this way. I was to deliver a *lecture* upon a certain topic, and was at liberty to interpose as many questions as I pleased; but there was a text-book, twenty, or thirty, or more, pages of which, furnished the foundation of the lecture. The students were supposed to have read this portion of the text, in anticipation of the lecture, and to be reasonably acquainted with the contents. Confining myself within these limits, how was I to proceed? It was not expedient for me to state the propositions in the words of the text. The students were acquainted with them already. It would be of little advantage to vary the phraseology, and state the same principles in different formulas. If the text-book was a good one, how was I to deliver a lecture without a "departure," which lawyers well know is, in pleading, obnoxious to a special demurrer. I might escape the dilemma by asking questions, but that was, to that extent, turning my lecture into a recitation by the students. I availed myself

largely of my privilege, however, and having made an earnest request to the students to ask me any questions on their part, they availed themselves of their privilege. The School was at that time a very strong one, many of the students being on their last term. And so we had for some time a lively interchange of interrogatories. It was not difficult to perceive that the students were disposed to try the new Professor, and I enjoyed it, for, having been fifteen years upon the Bench, I felt much more at home in answering questions, than I did in delivering Law lectures, properly so-called.

In this way I gradually found my way out of my embarrassments, having come to the conclusion that text-books were not the perfection of Law lectures, and that it would be no departure from a true lecture to subject the book to a rigid criticism, traversing its propositions if they were unsound, — qualifying them if the principle were stated too broadly, — suggesting exceptions, where they existed, — amplifying those parts where brevity had limited the statement too closely (not, perhaps, a very common fault), — and referring largely, in some instances, to contradictory decisions.

An illustration occurs to me, as I write, perhaps as marked as any which could be selected. Coming to the part of the text-book on Bailments, which treated of the question whether a common carrier can limit his liability, by a notice to the owner of the goods that he will be answerable only for negligence, or by an agreement with the owner that he should be so answerable only, — the suggestion was naturally made that they could not rely upon the text, nor upon the decisions referred to in the notes, because the extraordinary responsibility of the carrier, — that of an insurer, with certain exceptions, — did not arise from contract, and therefore was not governed by the law which regulated contracts in general, but was, as they had been called to note, imposed upon him by the policy of the law, for the reasons stated, — that the carrier could not relieve himself from this responsibility by a notice that he would not be bound by the rules of the law, even if such notice were given directly to the owner, — but this policy of the law did not prevent the carrier from making an agreement with the owner, for a more limited responsibility, which would be binding on the owner — nor from making reasonable rules for the government of his business

in relation to the times of receiving goods, for notice of contents of packages, respecting payment, &c., and that notice of such rules would impose upon the owner the duty of complying with them, — adding however, that the decisions were contradictory, and the practitioner must carefully ascertain what were the doctrines held by the Courts in the State where he resided, and govern himself accordingly.

Recapitulating the principles stated in the text, to some extent, where they appeared to be sound, in order to cover the ground by a connected discourse, and resorting to the method which I have stated where the matter appeared to call for it, I preferred, where I could shape them to advantage, to put cases illustrative of the subject matter, for the answers of the students, instead of questions directly upon the text-books. Suppose a client should state his case thus ——, what would be your opinion, or what would you advise him? In this way the student made a practical application of what he had read and heard.

Where there was no suitable text-book, which was thought to be a fact in some instances, I had, of course, to state and maintain my own propositions.[1]

But there came, in time, a new difficulty respecting questions of any sort, — and that was in obtaining answers to them without consuming too much of the time assigned to the lecture, — arising mainly from a fear, on the part of the student, that the answer

[1] If it had occurred to me, at that time, to turn to the account of the organization of the Law School of the New York University, published in the Law Reporter some ten years previously, to which I have referred, page 9, I might have been relieved from some of my embarrassment, or at least have had some earlier assurance respecting the course which my experience marked out for me. But at that time I had probably not read the article, and it certainly did not occur to me to seek a solution of my difficulties in that quarter. It is there said: — "The mode of instruction contemplated by the plan is by oral lectures illustrating and explaining a previously prescribed text reading, and by examinations thereon. In regard to this mode of instruction, we most cordially agree with Professor BUTLER, that the 'most useful kind of Law lectures is that which is designed to elucidate a preparatory course of text reading, previously assigned to the student, and to impress on his mind and memory, its leading principles:' and that 'the oral lecture is not only far more attractive and inciting, but it furnishes the opportunity of supplying the defects of the text-books, and of giving much useful information which would never be incorporated in a written lecture. The speaker not being confined to the precision of written language, nor to strictly scientific examination of his subject, and his great object being to expound and illustrate the Text reading, he may select such topics as are most important, and, when necessary, may amplify and repeat, in a manner which may be very useful to his hearers, but which would not be allowed in written composition.'"

might be wrong, — and an erroneous answer, made in the face of the whole School, was a subject of dread. There would doubtless have been less of this on questions directly upon the text-book, although in that case the facility of obtaining answers will naturally vary considerably at different terms.

A school of this kind thinks for itself, and feels for itself, to a very great degree. Of course its opinions and feelings, its moods and humors, vary more or less with the changes of its material. I speak of the general tone and temper of a school. At one time there are a few strong, confident young men, of more than average mental powers, and they give it a lead which makes the school generally of that character. At another time the average runs very even, and the school is studious and thoughtful, with no remarkable demonstrations. At another, very estimable young men, but inclined to timidity, have acquired the respect of their associates, and, in the absence of strong natures, the lead is that way. All this is very natural. We know how a few reckless, daring spirits, unless effectually checked, will give a lead and a tone to almost any school. The influence holds good in other respects.

If it might be supposed, that the difficulties and perplexities which I have stated were wearing away as my first term proceeded, I was not approaching a state of ease and comfort.

In June, Professor Greenleaf's health failed, and he left the School, and the city, to seek rest and repose elsewhere, tendering his resignation, to take effect at the close of the term. He had probably a premonition of that disease of the heart which suddenly terminated his life, in 1853.

The School was thus left wholly on my hands for the remainder of the term, with an experience of something more than three months to direct me.

Upon a new division of topics in the course of the vacation, with Professor Parsons, who succeeded Professor Greenleaf, I was desirous of retaining Shipping on my list, in the hope that my studies on that subject, during the last term, might avail me somewhat in another course of lectures; but the answer that his practice had been in Boston, and that branch of the law a specialty, could not but be admitted as a conclusive reason why I should give it up; as I did also the other text-book which had served as the basis for my other course of

lectures; so that I entered on my second term with the necessity of entire new preparation so far as lectures were concerned.

With the loss of Professors of large learning and experience, and a high reputation as instructors, and the substitution of those who had no experience whatever, it was impossible that that the attendance should not diminish.

The new administration closed its first term in January, 1849, with one hundred students on its roll, which, however, was a larger number than was in attendance at the term closing in July, 1847. The number did not increase until the third year afterwards, but held, with the exception of one term, at nearly that number.

And here I may note an illustration of my remarks in relation to changes in the moods and phases of the School. Being deeply impressed with the value of Moot Courts, as a means of instruction, I proposed, at this first term of the new administration, to double the number, so as to hold two each week, which was assented to, and that course adopted as a Faculty regulation. The plan worked well for a time,—the students were eager to take their turns as counsel, and prepared their cases with great zeal. But in the course of a few years a change came over the spirit of the dreams of their successors, the interest flagged, and then came a term at which it was difficult to find students who were entitled to act as counsel, and who were willing to be retained, and I yielded very reluctantly to a proposition to change the rule. The School changed afterwards, but I could never procure its restoration.

The precise mode of lecturing adopted by my associates, I am unable to state, but suppose that the general method of instruction in the School, taken as a whole, however it might differ in minor details, was not essentially different from that which had been in use by our predecessors.

The mode of instruction adopted by the Litchfield school was well adapted to the time when it was instituted and attained its greatest success. But the multiplication of text-books and digests, in the half-century which succeeded, had rendered it inappropriate. It was no longer the business of students to make manuscript texts and digests for themselves. The multiplication of decisions rendered it impracticable to

collect and explain all, or even the most important of them, and an attempt to follow that course would have been not merely unwise, but positively pernicious. While it answered well in the age when cases were comparatively few, when Mansfield and Ashhurst, Buller and Grose had just been settling in a court of law some of the great principles which lie at the foundation of commercial jurisprudence, and those principles had not been traced into their minute ramifications, — it would now, in my opinion, with the immense addition of cases and arguments which the books furnish, fill the mind of the student with a mass of material which he may readily find elsewhere when he has occasion for it, — which, if he were to attempt to memorize it in the School, — however he might classify it, — he could never readily apply to the infinite variety of human transactions in the minute variations which might present themselves in his practice; and if he did not become merely a "case lawyer," as those are called who have only a recollection of cases, he would be, at best, a digest of matter which he could not apply with the necessary facility. No small part of the education of the legal student is to learn how to study, — to learn that the law, as a whole, is, necessarily, a mass of principles and rules applicable to various interests, rights, obligations, and duties, many of which relate to a single branch of those interests or rights, — as the principles which govern the acquisition, possession, and transfer of real estate, the law which regulates the rights and duties of Principal and Agent, and the law of Bills of Exchange; while other principles and rules have a much wider application; that in relation to these last, it is often a most difficult inquiry to ascertain which of different principles governs a particular case; and that there are, besides, distinctions continually presenting themselves requiring a very nice and accurate discrimination.

But I am not writing a treatise on the study of the law, my object being, merely, to justify, if I may, that course of instruction which leads the student to the acquisition of a knowledge of the great principles which lie at the foundation of jurisprudence, — to an investigation of the relations of the different principles to each other, — and to their practical application, — instead of a course which leads to the collection of a large number of legal propositions, and to a digest of cases.

The course of instruction which comes nearest to the attainment of the result which I have indicated is the best course.

Recitations, however well adapted to the education of children, and even to young men in the Academic department, and however perfect they may be, will not make lawyers. That they may be used to some extent is not to be doubted, — but they should be auxiliary, and not principal.

Neither will lectures make lawyers. But it is more important that the Instructor should tell the students of a Law School what he knows which is not contained in the text-books, than that they should tell him what they know is to be found there.

Of the success of the school from January 1848 to January 1868, I may not speak, except by furnishing a few data for examination, and for comparison between the periods prior and subsequent to January 1848, and by a reference to the reports of the several Presidents of the College.

From January 1848, to January 1858, the lowest numbers were *seventy-four*, and *eighty-eight*, the highest *one hundred and forty-three*, and *one hundred and fifty*, the average being *one hundred and one*. From 1858 to 1868, the lowest numbers prior to the war were *one hundred and nine*, and *one hundred and twenty-six*, the highest *one hundred and sixty-seven*, and *one hundred and seventy-six;* during the war the lowest in 1862, and 1863, were *sixty-nine*, and *seventy-nine*, the highest *one hundred and twenty-six*, and *one hundred and thirty-six;* after the war the lowest were *one hundred and nineteen*, and *one hundred and twenty-eight*, the highest *one hundred and sixty-eight*, and *one hundred and seventy-seven*, the largest number ever in attendance; — average during the whole period, near *one hundred and twenty-nine;* average, deducting the period of the war, *one hundred and forty-four.*

A comparison of averages, omitting the earlier years of the two periods, gives from 1842 to 1844 *one hundred and eleven;* from 1844 to 1848 *one hundred and thirty two;* from 1853 to 1862 *one hundred and twenty-seven*, and after the war, from July 1865 to January 1868, *one hundred and forty-eight.*

One other comparison. The aggregate of the highest numbers for any six terms prior to 1848 was *eight hundred and forty eight*, average *one hundred and forty-one*; the aggregate of the highest numbers for six terms after 1848 was *nine hun-*

dred and eighty-nine, average *one hundred and sixty-five*, lacking one.

If it be said, that there was an increase of population and wealth within the last period, it must be said also, that there was a great increase of Law Schools, — quite as many commercial convulsions, which always affected the School, — that after the slavery agitation in 1854, the attendance from the Southern States did not increase, and on the opening of the war, with one or two exceptions, ceased entirely. There had been an average of nearly thirty students from that section. Besides, the war drew heavily from the School to recruit the armies of the Union. In January 1860 the attendance was *one hundred and seventy-six*, in July 1862 *sixty-nine;* in January 1866 *one hundred and seventy-seven.*

We have seen very clearly what the character of the School was up to 1848.

If the data already given are not sufficient, on which to determine whether its character after that time rendered it obnoxious to the charge which has been brought against it, reference may be had to the proceedings at the celebration of the Story Association formed by the students of the School in 1851. Again, eminent men, judges, counsellors, statesmen, and scholars assembled within its walls,[1] to participate in its festivities.

Once more. — The annual reports of the different Presidents of the College, to the Board of Overseers, on the state of the different Departments of the College, if they may be supposed to place them in the most favorable light, must also be supposed not to contain any statements which were contrary to the received reputation of any Department.

I may not quote from the report of President Everett, made in January 1849, in relation to the changes which occurred in 1848. It was very natural that it should be complimentary, and may be so received.

In December of that year, President Sparks's report said, — "The school continues to retain the confidence which the public has so largely bestowed upon it, and which is justified by its present numbers and general prosperity."

In his report in 1852, he said, — "The Law School has exhibited steady proofs of growing prosperity. It is believed that

[1] See Boston *Daily Advertiser*, July 21, 1851.

the attendance on the lectures, application to study, and the deportment of the young gentlemen connected with the school, have at no period been entitled to higher approbation."

President Walker, who had been for nearly twenty years a member of the Corporation, and for fifteen years Professor in the Academic department, said of it, in his first Presidential report, in 1853, "This school has become a national institution. Not a third of its present members are from Massachusetts and but little more than half from the New England States."

His report in 1854, contains this clause, — "The Law School continues to flourish, as will appear from the details given in the Appendix. The number of students was larger last year than at any former period, as was also the number of graduates. Notwithstanding the increased expenses of living, the pressure of the times and other adverse influences, the number of students in attendance has fallen off but little, standing at present at one hundred and forty-three. They are drawn, as heretofore, from almost every State and territory in the Union. To sustain the character and reputation of the school, and to increase or even to retain its present numbers, it is believed that more superintendence and instruction are required than can be given by two Professors."

In 1855 his report was, — "Though from various causes the number of students has fallen off a little, almost every State in the Union is still represented in the Law School, and the spirit prevailing there was never better than at present."

In 1856, — "The Law School is still resorted to by students from every section and from almost every college in the United States. Its Faculty has been strengthened, and its means of instruction and superintendence materially extended, during the past year, by the institution of a third Professorship and the appointment of Ex-Governor Washburn to the new chair."

His report for 1857 says, — "The Law School is in a flourishing condition."

In 1858, — "The Law School, notwithstanding the multiplication of similar institutions throughout the country and the flourishing condition of several of them, has not declined either in numbers or usefulness."

In 1859, — "The Law School is in a more flourishing condition than at any other former period, numbering at present

one hundred and seventy-eight students drawn together from every part of the country."

Next come the reports of President Felton. In 1860, he says, — "The Law School has not only maintained but surpassed its former prosperity. As has been already mentioned, the students have been drawn from twenty-nine States. They have pursued their studies with exemplary diligence, and while the discords of the country have been increasing, they have lived in uninterrupted harmony. The Law Library needs to be enlarged, and it is hoped that a Professorship of Roman Law may be added to its means of instruction."

In his report for 1861, President Felton has to note the fact that, "The Law School has been somewhat affected by the state of the times." He adds, "A considerable number of Law students usually come from the Southern and Western States, and this circumstance has given that department of the University a beneficent influence upon the whole country, and that influence will be felt again the moment peace is restored. Notwithstanding these drawbacks the school has been well attended, and the young men have devoted themselves to their studies with unusual earnestness and success."

Assailed by the accusation which has given rise to this paper, the School is entitled to the benefit of these annual commendations.

If the reports of President Hill do not contain similar matter, the reason may, perhaps, be found in the fact that his reports treated more of additions and improvements which were desirable in the Academic, than of the existing state of things in any department of the College.

Notwithstanding the secession of Southern students, and the multiplication of Law Schools, this School was at the height of its prosperity, as regards the number of students in attendance, and the number of degrees, in the latter part of the time while he held the Presidency.

The design of the school, as announced in its early circulars, was to afford a complete course of legal education for gentlemen intended for the Bar in any of the United States, except in matters of mere local law and practice.

We have seen that in 1843 it was not regarded as a local institution, but as national in its character, — that in 1845, this

view of its character was sustained at the celebration on the enlargement of its Hall, — that in 1853, President Walker characterized it as a National Institution, subjoining proofs of the fact, and that similar proofs appear in subsequent Presidential reports, from year to year.

Notwithstanding the increase of Law Schools after 1848,[1] and notwithstanding the agitation respecting slavery, its students for many years before the war came from near or quite two thirds of the States in the Union, with numbers from New Brunswick, and Nova Scotia, and not only so, but a large majority of them were from other places than Massachusetts.[2]

It has been suggested as a reason why so many of its students were from other States, that the School has been extensively advertised. It has advertised the commencement and duration of its terms, with a direction to whom application might be made for catalogues and circulars, and through such applications, as well as by distributions by its students, it has extensively advertised the Academic Department by a circulation of the College catalogue.[3] Its best advertisements have have been the students who have gone forth from its walls to success and distinction in the ranks of the profession, and its large and very valuable Library.

But I am not to overlook the fact that there is in the defamation something in the nature of a specification. The statistics thus presented, it is admitted, do not cover the whole of the accusation. The accuser is, to some extent, it does not precisely appear to what extent, more specific in his charge. His language already quoted is, — "Still, a school which undertook to confer degrees without any preliminary examination what-

[1] In 1848 the number of Law Schools was nine, several of them in their infancy. In 1862 they had increased to eighteen, some of them in positions where they would necessarily affect this school, to some extent, more especially those whose degree gave admission to the Bar of the States, in which they were situated.

[2] Perhaps the critics may, upon reconsideration, be inclined to regard the School as "almost a disgrace" to the United States.

[3] "It is a gratifying circumstance that at the commencement of the present term twenty-six States were represented in the undergraduate department, — a larger number than were ever represented before, and larger by nine States than were represented ten years ago, — and the members of the Law School represented twenty-nine States. Harvard College has grown from a provincial School to a national University, comparing favorably in point of numbers and courses of instruction with the Universities of the Old World." — *President Felton's Report to the Overseers*, December, 1860. The question what addition to this representation of the States in the undergraduate department was made by the circulation of College catalogues, and otherwise, by the Law School, does not admit of a precise answer.

ever, was doing something every year to injure the profession throughout the country, and to discourage real students." This then, so far as there is specification, is the reason why the school was "almost a disgrace to the Commonwealth." It is not assigned as the whole reason, but it seems to be advanced as the principal point. Whatever is beyond is left to conjecture.

It is obvious to remark upon this, in the first place, that a degree, the conferring of which did something to injure the profession and discourage students, and by reason of which the school which conferred it was "almost a disgrace" to the State in which it is situated, could not have been a coveted distinction, and the large increase of the number of graduates is something very remarkable. This very obnoxious degree was received in 1866 by *sixty-nine* students, and in 1867 by *seventy-four*, the largest numbers at any period since the institution of the School. Such a degree should, itself, have been regarded as a disgrace.

The supposition that the accuser himself has received that obnoxious degree, which poisons the good name of the State, transcends any ordinary capacity of belief. He should have rejected it when tendered to him, very nearly, not quite, in the language of the state prison convict who, when the warden told him that if he would behave well during his term, he would, at its expiration, give him a certificate, replied, — "That would be a —— pretty travelling recommendation."

If the writer of the article is really a graduate, the exploded rule of law, that no person should be admitted to stultify himself, ought to be revived for his benefit.

The critic must have known (as critics are presumed to know everything, and take good care by their confident opinions and assertions not to rebut the presumption), that the accusation, so far as it is founded on the degree without examination, is an impeachment of the Corporation and Overseers, and not of the Faculty or of the School. The rule regulating degrees is in no wise under the control of the Faculty. The Law Professors in office when the rule was under consideration, may have been accessories before the fact, but their successors, who have administered it, cannot be charged as accessories, or aiders and abetters, for they have only performed their duty,

and that cannot be charged as an offence. Such Presidents as Kirkland, Quincy, Everett, Sparks, Walker, Felton, and Hill, and among the Fellows such lawyers as H. G. Otis, Charles Jackson, Joseph Story, Lemuel Shaw, Charles G. Loring, B. R. Curtis, E. R. Hoar, and B. F. Crowninshield, have been art and part in adopting, or maintaining, the rule. It is these men, and others like them, who are accused of "doing something every year to injure the profession," and of making the Law School "almost a disgrace" so far as the degree is concerned in producing that result.

"Mr. ——," said Professor Ashmun to a very conceited student, — (there are such occasionally, — rare instances, I am happy to say), — "Mr. ——, what is the rule of law in such a case," — stating it. The student confidently said the rule was so and so. "Well, Mr. ——," said the Professor, "of course you must be right, but this old fool of a Coke says the rule is directly the other way." And so these —— gentlemen, of the Corporation, said the rule should be that, which the critic says would have made the School a disgrace, had not some good courses of lectures interposed to save it from becoming absolutely bad, and left it only almost so.

The Catalogue for 1829–30 contains the circular of the School. Before that the catalogue had only the names of the officers and students. The rule regulating degrees, as there set down, is, — "Gentlemen who are graduates of a College will complete their education in three years. Those who are not graduates will complete it in five years." This was in conformity with the rule of the Bar in Massachusetts, and some other States, — a rule recognized by the Courts, which admitted to practice on the recommendation of the Bar, — by which graduates were required to study three years, and those who were not graduates five years, before admission. And under this rule of the College, students who commenced study in the School, and pursued the full course of two years, did not obtain the degree until they had studied the remainder of the term, either in the School or elsewhere.

But this was applying the Massachusetts rule for admission, to students who came from States where a different rule prevailed, and in 1834–35 we find the rule of graduation to be — "The degree of Bachelor of Laws is conferred by the Uni-

versity on students who have completed the regular term of professional study required by the laws or rules in the State to which they belong, eighteen months having been passed in the Law School of this Institution."

This, however, still left an inequality. Of two students who had studied eighteen months in the school, one could have his degree immediately, because the rule in his State required no longer term of study for admission to the Bar. The other, if a graduate, must wait eighteen months, and study somewhere during that term, because his State required three years for admission. If he had not an Academic degree, he must wait and study two years longer. The impropriety of making the degree depend on what transpired elsewhere, and especially upon inequalities arising under State rules and regulations, doubtless became apparent when it was further considered, and so we have another change, but one which was not entirely for the removal of all inequality.

In 1839–40 we find the rule thus, "All students who have pursued their studies in the Law School for three terms, or eighteen months, or who having been admitted to the Bar, after a year's previous study, have subsequently pursued their studies in this School for one year, are entitled upon the certificate and recommendation of the Law Faculty, and on payment of all dues to the College, to the degree of Bachelor of Laws."

This discrimination in favor of gentlemen who have been admitted to the Bar was doubtless intended to attract that class, and induce them to avail themselves of the benefit of the School.

With a change which provides for the allowance of six months' study in another Law School having power to confer degrees, as a part of the eighteen months required, this rule stood for thirty years.

Now I do not mean to say that this rule was the wisest which could be devised. That is, of course, an open question. And the rule having been changed so as to require an examination, in order to attain the degree, that ought to be the better rule. Such being the opinion of those who now have the matter in charge, the change is well, although the question which is the better rule can hardly be settled, with any precis-

ion, because so many foreign elements will interfere with those upon which the question should be determined. See Appendix Note A.

But I have to say, that considering the rule carefully, during my connection with the School, — because it was a subject relating to administration upon which at any time a representation might have been made to the Corporation, I came decidedly to the conclusion that no change was desirable.

With the exception of the requisition of a certain term of study, the degree is honorary, and has been so understood by those conversant with the rule. It did not admit to the Bar, unless there was in some State, legislation to that effect, and in such case the fair presumption was that the act was passed with knowledge of the requirements of the School, and with a design to induce candidates for the profession to avail themselves of advantages for the acquisition of legal knowledge, greater than they would have by the general course of admission.

Generally, however, where provisions exist by which the degree operates as an admission to the Bar, they are limited to the school or schools of the State, and intended for the encouragement of such schools, and in such cases as there is no examination for admission to the Bar, it is quite proper that one should precede the degree.[1]

But in the absence of legislation giving to the degree the effect of admission, the degrees of a Law School differ materially from the ordinary degrees of the Academic department. There the study for a term of years is not for the purpose of qualifying the student for a particular vocation, to enter which he must pass a subsequent examination, on his college

[1] Such is the case in the Law School of Columbia College, which was established in 1858, and had fifty students that year. In 1860, the Legislature of New York passed an act, by which graduates of the school are admitted to practice in all the courts of the State on receiving the College diploma. This was asked for on the condition that a course of two years' study should be required for the degree. There were two hundred and thirty students the past year. But one hundred and sixteen of these were from New York City, forty from other places in the State, thirty from New Jersey, and thirteen from Connecticut. And notwithstanding the deserved reputation of the School it may fairly be presumed that many of them were attracted by the operation of the degree as an admission to the Bar.

It is understood also that the degree of the Law School at Cincinnati gave admission to the Bar of Ohio. Further than this I am not advised. Perhaps such provisions have a tendency to make local schools.

studies, by another authority. Whereas that is emphatically true of the student in the Law School, if he is required to pass an examination for his degree, and another for his admission to the Bar, — one for the honor, another for the practical result. He may like it. If so, there can be no reasonable objection.

The tendency of legislation for many years past has been to give admission to the Bar, to all citizens of the State, twenty-one years of age, and of good moral character. Such is, by statute, the rule in some of the States, compulsory on the courts. No novitiate, whatever, is required.

With such legislation, and such tendencies, if it is not the duty of the Law Schools to throw open wide their doors, and entice all who can be induced, to come in and avail themselves of their advantages, — offering the honors of the school, on time, without further examination respecting acquisitions, it is certainly not an offence, to do so. Great benefit must result. A young man cannot well breathe the atmosphere of an active school, without learning something of the law. As a general rule, parties induced to join in order to obtain the degree, whether with or without examination, will understand their own interest, and labor accordingly. Idleness and negligence will be the exception. Examination as a requisite for the degree must have a tendency to repel those whose previous limited education renders them doubtful whether they shall be able to acquit themselves, satisfactorily, under such a test; and these are the very ones it is desirable to reach. Some of them, — I think I may say the greater portion of the earnest ones, are quite as likely to avail themselves fully of the advantages which they possess, — to use what they acquire, in the further pursuit of professional knowledge, and in the successful practice of the profession, — as those who are anxious to be examined to obtain the diploma. There were from time to time ten, twelve, fourteen attorneys at Law, in the School, desirous to obtain the degree. How many of them would have come to be examined for it cannot be known.[1]

[1] Rev. Dr. Peabody, as acting President, said in his report in 1862, speaking of scholarships in the Academic Department,— "But there is a large class of deserving and needy students who fall short of the rank which entitles them to scholarships. Among those who become our best scholars there are some who, not having enjoyed the preliminary training of schools of high grade, are not prepared, for the first months of their college course, to become successful competitors with those who are thoroughly fitted

For these and other reasons, I have been satisfied of the wisdom of the learned men whose policy invited as many as would, to come and share the advantages of the School, — to acquire the knowledge how study should be pursued, and investigations made, and principles applied; and how distinctions show differences leading to varied results, — rather than to memorize an indefinite number of legal principles, which dozens of text-books at the present day will furnish them, and which therefore they can commit to memory more thoroughly in the early days of their professional life. A young man may make himself a very respectable digest of legal propositions, with a very limited knowledge of the reasons why they exist, and of the methods of their use.

The knowledge of forms, and of their practical application, is best acquired in an office.

Thus much for the libel in the Law Review.

A Report from the committee appointed to visit the Law School in the present year, and published, out of the usual course, in the Daily Advertiser, of October 17th, while it makes no charges, directly, against the previous administration of the School, may be thought to contain some implications of that character. It is as follows: —

"The committee appointed to visit the Law School respectfully report:" —

"That, in the discharge of their duty, they have, by committees of their number, visited the school and attended its exercises. They have also, in their own meetings, and in conference with the president of the university, considered and discussed the prospects and needs of the school, and the various plans suggested for increasing its usefulness. Several of the suggestions which they had intended to make have been anticipated by the action of the law faculty and

to enter college. There are others who fall but little below the successful competitors, and are fully their equals in industry and merit. There are yet others, destined to be able and useful men in after life, who commence their education at a late period, and cannot therefore become as accurate classical scholars as those who acquire the rudiments of the ancient languages in childhood, who yet attest their mental capacity and vigor by their strong grasp of the subjects on which they are occupied in the last year of the college course."

This description, with a slight variation, is, perhaps, quite as applicable to students in the Law School, as to those in the Academic Department; and may be considered with reference to degrees, as well as to scholarships.

of the corporation, especially that of procuring courses of lectures and instruction by gentlemen eminent in the active practice of the profession, from which the committee expect excellent results."

"They are happy in being able to report generally that the school is animated with an excellent spirit, and that both what is now doing, and what it promises for the next years, is encouraging and satisfactory.

"It is much to be regretted that the library, which was formed on a comprehensive plan, has not, of late years, kept up with the progress of the law, and that its condition, as respects the preservation of the books, is not agreable to the lover of books, or the lover of learning. The attention of the law faculty is directed, as the committee have reason to know, to some method for the better preservation of the library, and for the more careful and systematic selection of books by purchase; and it is much to be desired that such a plan may soon be devised and carried into execution."

"The committee also wish to express the opinion that the system of oral recitations, formerly in use, might with advantage be restored. It has seemed to them that a system of lectures, not assisted and enforced by recitations, is defective in theory, and not satisfactory in practice. The committee are happy to observe that systematic instruction in pleading, with written exercises, has been introduced, and they think that similar instruction, to some extent, in drawing other legal papers, might be of practical advantage."

"The moot-courts are — as they have ever been — a most useful stimulant to the student, and are conducted with spirit and interest. It may, perhaps, be suggested, that the nearer a moot-court approaches an actual court of law, especially in order and decorum, the more useful it will be as a preparation, and the less will the change be felt when the student takes his place at the bar. Applause from an audience is not calculated to produce the true style of legal arguments, which aims only at convincing the court; and it is also to be desired, in considering the order of the room, that the student, when he first stands before a court — in the responsible position of conducting a real case — when he will need all his faculties to be undisturbed — should not find the observance of the ordinary rules of decorum to be a restraint by reason of their novelty.

"For the committee,

"F. E. PARKER, *Chairman.*"

There is something singular respecting this report. So far as I am aware, it is the only one, out of some fifteen or more which must have been made by the different visiting committees, which has been supposed to require, or particularly to de-

serve, publication in this mode. Nothing is shown on the face of it, either in matter or manner, to indicate that the interest of the School required an extraordinary publication of this character. Nor do the subjects treated of appear to be of such public interest as to call for a newspaper circulation.

But this is not for me to determine. It may be expedient that the public should be informed, in this mode, that the committee, in meetings of their own, and in conference with the president, have discussed the prospects and needs of the School, — and that several of the suggestions which they had intended to make have been anticipated by the action of the law faculty and the corporation, especially that of procuring courses of lectures, &c. This last particular is the one that seems most to require an advertisement.

But is it in the interests of the School that the public is informed that "it is much to be regretted that the library, which was formed on a comprehensive plan, has not, of late years, kept up with the progress of the law, and that its condition as respects the preservation of the books is not agreeable to the lover of books or the lover of learning."

If in either of these respects there has been a neglect which has impaired the usefulness of the library, as it has existed heretofore, then it is but justice that the public should in this way be advised of the fact, and thus be put upon the inquiry whether the means of instruction are still sufficient.

It is evident, however, that it was not as a "caution to the public," that this report was published.

But it forms, perhaps, an appropriate supplement to the article in the Law Review, which it closely succeeded, and may, like that, serve to herald the glory of the new order of things, by a little depreciation of the old, — and so I propose to add my mite to the extension of its circulation, but with the addition of some matters, which it may be presumed that the portion of the committee which concocted the report "did not understand."

Respecting the recommendation of a return to the system of oral recitations, I have nothing to add to what has been said, except that the Catalogue for the present year shows the appointment of four additional instructors for the year, all of them as "Lecturers."

With the exception of a limited outfit, the school was a self-supporting institution, until Mr. Bussey's princely donation to the College, of the income of which it is the recipient in part, became available to some extent in 1861–62.

The endowment of the Royall Professorship, the income of which until 1869 was accounted for by the college at five per cent. ($397.18), less than one seventh of the salary, for many years, has already been stated.

We have seen that Mr. Dane's original foundation for the professorship which bears his name was $10,000. He afterwards lent to the corporation the sum of $7,000, to aid in building a Hall, under an arrangement by which at the end of five years the sum of $5,000 was to be transferred to the endowment of the professorship, and the remaining $2,000 was to be repaid, which was done.[1]

The income of the fund of this professorship, which at first was credited to the school at $500, was thus raised to $750, at which it stood in the college books until 1867, — one quarter of the salary of the professor, for many years. The balance of the amount required to erect the original Hall ($3,667.20) was supplied from the general funds of the College. Thus the whole expense of the original structure (10,667.20) was defrayed by the College.

There is a small fund, called the Foster fund, the income of which ($151.02) was received by the School every third year, it being distributed to the Theological, Law, and Medical schools alternately.

With these exceptions the School until 1862 paid its own expenses.

The enlargement of the Hall in 1843–44 costing $12,707.22, — the purchase of books for its library, which in August, 1848,

[1] President Quincy, in his History of the College, says, — "In October 1841, Mr. Dane advanced the sum of $5,000 towards the erection of a Law college, and proffered a loan of $2,000 more in order to enable the corporation to proceed immediately to erect the edifice." And the Treasurer in his Statement for 1831–32 says, — "By funds, chiefly supplied by his [Mr. Dane's] bounty, a new Hall has been erected, combining offices for the professors," &c., — and again, "Hon. Nathan Dane has placed with the corporation the sum of $7,000, for the erection of a Law college."

From these statements it would be inferred that Mr. Dane had made a donation of $5,000, at least, for that purpose. But the Treasurer's accounts show that the sum of $5,000, thus "advanced," or "supplied," was, at the end of five years, to be added to his original donation, to found his professorship, which was done, Mr. Dane receiving, it seems, five per cent. interest in the mean time. The sum of $2,000 was repaid to his executor.

had cost $34,916.57, — the subsequent additions which will be stated, — the salaries of its officers, — premiums for dissertations, — with its other expenses, and some heavy extra charges, have been defrayed from its revenues.

It received a large and very valuable accession of books, relating to Foreign, particularly Roman Law, from the bequest of Samuel Livermore, Esq., of New Orleans, who died in 1833. And it has been the recipient of numerous smaller donations of books, from other parties.

Beyond this, so far as I am advised, until Mr. Bussey's bequest gave it an income, in the accounts of 1861–62, of $2,500.82, it has not been a tax upon the charity of the public, or the purse of the corporation.

On the contrary it has been charged, for a number of years, with a percentage upon its receipts for tuition, for the use of the College Library by its students, and with a portion of the salary of the Assistant Steward, $400 or $500 per annum, for the services rendered in the Steward's office in receiving and disbursing its revenues. Against the tax for the use of the College Library the Professors remonstrated, — on the ground that it was greatly disproportionate to the use of the books by the law students, and that the School needed all its funds for the increase of its own library and other purposes, — and obtained some reduction.

But a more serious draft upon its ability to provide for the increase of its library, resulted from an attempt to reduce the expenses of its students for board and rooms. Numbers of the students in the School were young men of limited means. Others were prevented from joining for a similar reason. There were numerous inquiries whether students could find employment to enable them to pay expenses, and whether there were any funds to aid them. The Faculty appropriated the income of the Foster fund, received every third year, in aid of such students, by small appropriations toward the payment of the fees for tuition. But this was a very small matter. The Professors applied to the Corporation for authority to remit the charges for tuition, in special cases, and obtained leave for each Professor to nominate one student for remission, in consideration of such services as the student might perform, and authority for the Faculty to receive notes, payable when the promissor

should be able, for the tuition of six others. By applying this authority to credits for part of the tuition of several students, according to the exigency of each case, requiring the residue to be paid, it was made to operate as a relief to numbers, but, severally, of very small amounts; and all this in no manner reached the expense of board and room-rents, which, with a large increase of students in the several departments, had increased in a greater degree.

Believing that these expenses were too high, an attempt to reduce them was made in 1856 by the purchase, on Law School account, of the Brattle House, a hotel recently discontinued. This was done with the consent, and by the act, of the Corporation.

President Walker, in his report for 1857, after saying that the Law School was in a flourishing condition, added, — "With a view to reduce the expenses of education at the School, the Brattle House has been purchased, by the Corporation, for the accommodation of the students, a much lower rent being charged for the rooms than has heretofore been paid for those obtained in the village, or in the college buildings. The basement and lower story have been rented to the keeper of a boarding-house," &c. . . . . "The accumulated funds of the Law School have been invested in the purchase, and the whole establishment has been placed under the supervision and control of the Law Faculty. There has not, as yet, been sufficient opportunity to determine how far this experiment will prove successful."

Three or four years of experiment, however, settled that matter, resulting in disaster. The accumulated fund thus invested, amounting with interest for the year to $16,886.70, was lost, and the Treasurer's books showed a debit to the school in 1860 of $17,299.21, which was subsequently reduced by a credit of $15,000 for the property. The school was thus deprived of the means to make more than the necessary additions to its library, for several years. It was discharging its debt, when the war reduced its revenues, on the one hand; and some income from the Bussey estate came to give timely aid, on the other.[1]

[1] The scheme to purchase the Brattle House did not originate with me, nor did I make any of the calculations, by which it was supposed to be shown, that it would not

Thus the library was not enlarged, as it might otherwise have been. But notwithstanding the reduction of receipts, by change of instructors, financial revulsions, and this absorption of its funds by the purchase of the Brattle House, it expended in the purchase of books for its library from August 1848, to August 1858, sums amounting to $8,496.77; and notwithstanding the loss occasioned by that purchase, and the diminution of its revenues by the war, it expended for the same purpose, in the next ten years, $8,838.61, a total of $17,335.38; besides paying $13,812.50 toward the increase of the college library in the same time, exacted mainly because the college library could not get money enough in other ways.

However desirable it might have been to make other purchases, certain it is that no serious inconvenience was sustained by the students, or any one else, by reason of any lack of additions. And I submit, that under the circumstances, the School is not to be charged, even by implication, with a dereliction of duty in this respect.

A special committee of the Board of Overseers, appointed in 1868, to whom the annual reports of the several Visiting and Examining committees were referred, with instructions to prepare a full account of the condition, needs, and prospects of the University, reported in February, 1869, on this part of their subject, — "The library of the school, though by no means complete, is supposed to be much the largest law library in the country. It numbers about thirteen thousand volumes, comprising all the American Reports and the Statutes of the United States, as well as those of all the several States; a regular series of all the English Reports, including the Year Books, and also the English Statutes; the principal treatises in American and English law, together with a large collection of Scotch, French, German, and other foreign law, and of the

entail any loss upon the School, but would furnish an income, — nor was I present when it was finally determined to make the purchase. But the attempt to lessen the expenses had my hearty support, — the purchase, my approval, on the representations which were made; my aid, such as it might be, was given to render it a success, and I do not shrink from my share of responsibility for the measure and its effects. The arrangement failed, partly from the fact that no person eminently qualified could be found to manage the concern, and partly because the partial measure of success which attended it, by reducing the rates charged elsewhere, tended, of itself, to pecuniary loss. This loss of the accumulations of the School in an attempt to render its advantages more accessible was a misfortune, but not even almost a disgrace.

best editions of the Roman or Civil Law, with the most celebrated commentators on that law."

This does not look like great neglect. The members of that Committee, who may be supposed to be lovers of books and lovers of learning, do not appear to have discovered anything in the appearance of the library to call for special comment. They say, in closing their report upon the School, — "They [the students] come from every part of the Union, about twenty-five States, on an average, being represented each year; so that there is no extravagance in regarding the School, thus constituted, as one of the instrumentalities that must help to promote a good understanding between the different sections of the country."

Alas! that it should have been, just at that time, and long previous, "almost a disgrace" to Massachusetts; and that a Visiting Committee should have discovered, in the very next year, that it was "much to be regretted that the library, which was formed on a comprehensive plan, has not, of late years, kept up with the progress of the law, and that its condition, as respects the preservation of the books, is not agreeable to the lover of books or the lover of learning;" and that it was found expedient to inform the public, generally, of those facts.

This brings us to the consideration of the latter part of this charge, — neglect as respects the preservation of the library.

Notwithstanding "the attention of the Law Faculty is directed, as the committee have reason to know, to some method for the better preservation of the library," it may be expedient to consider the method of the past, in connection with its alleged results.

Lovers of books are of two kind. One loves them for their nice appearance on the shelves, — for the uniform sizes in which they may be arranged, "all in a row," — for the fresh appearance of their backs (a little gilt adds somewhat to the affection), — and for the evidence, if they have been used, that it has been by dainty fingers.

It is certainly desirable, that they should not be used by dirty fingers. But in a large library, many of the books used only at intervals, longer or shorter, dust will accumulate, finger-glasses are not among the ordinary appurtenances, nor has each man who examines them a wash-bowl at his elbow; and

so the fingers do become soiled with a little dust, which, being partially transferred to the books, offends the visual organs of this lover of books.

Another loves them for the treasures of learning and knowledge which they contain, and for their capacity of transferring their stores of learning into the possession of those who study them, to be used for the promotion of the welfare and happiness of mankind.

Lovers of learning are generally of this latter class, and they know that books cannot be diligently read and studied, by hundreds of young men, for ten, twenty, thirty, forty, or fifty years, as the case may be, without becoming soiled, worn, even dilapidated. Leaves will become loose, and covers will break: —

"'t is true, 't is pity,
And pity 't is, 't is true."

Presuming that there has not been any material change in the appearance of the books since my resignation, in January, 1868, I point to their worn appearance with pride, as an evidence that they have been diligently appropriated to the purpose for which they were designed, and that they have given their efficient aid in sending a knowledge of the law into nearly all the United States, New Brunswick, Nova Scotia, and other places, some of the isles of the sea included.

Doubtless some injury may have occurred, which could have been avoided by more careful handling. That is but an ordinary incident to the use of books by many persons.

But many of these books, used with all due care, have had a longer and a harder service than some of the persons to whom their appearance is not agreeable; and may therefore be held excused if they look a little more worn.

The care and preservation of the library is not a new subject with me.

Uniform practice, heretofore, from the commencement of the School, has been to give the students free access to the books in the library, for use in the library-room, and the privilege of taking volumes to their rooms on having them charged by the librarian. This is no more than the usual privilege accorded to students in offices. It is, if not absolutely essential, at least

of great convenience in the preparation of cases for the Moot courts, and facilitates the progress of their general studies.

This freedom of use subjects the books, of course, to wear, and dilapidation of binding, to an occasional loss of a text-book, or other elementary work, and sometimes, out of course, to depredations of a larger amount. An instance of the latter character occurred many years since. At the opening of one of the terms, the janitor brought to my office some twenty volumes on which there had been an attempt to deface the stamps on the covers, and the labels, which showed that they were the property of the School. Whether conscience, or parental intervention, or fear of detection because something of the marks remained on most of them, caused the restoration is unknown. It was understood to be a case of property returned, "no questions asked." Although the attempt had been so far unsuccessful, that the books could not have been used without danger of detection, an order was immediately given to procure a suitable stamp, and to stamp many of the leaves throughout all the volumes of the library, so that the evidence of ownership could not be destroyed without tearing out the leaves, which it was supposed must prevent similar attempts in the future. But in 1861, the librarian became suspicious that some one was stealing the books. Efforts were made to detect the supposed offender, without success, and the librarian, a nervous man, became quite excited on the subject. In this state of affairs there came a visitation.

Prior to 1861 there had been a visitation of the law library, from time to time, by a sub-committee of the committee appointed to visit "The Library," under a notion that "The Library" included all the libraries of the different departments. Some countenance had been given to such an idea, by the fact that in annual catalogues, and other publications where it was desirable to make a show of the possession of large numbers of books, the "University Library" was made to include the College library, the libraries of all the professional Schools, the Astronomical library, and even the Society libraries of the students. But when it was said, on the same page, "the Library is always closed on Saturdays," the College library alone was intended. And when the Overseers appointed one committee to visit "The Library," as a department of the Col-

lege, another committee to visit the Theological School, another to visit the Law School, and another the Medical School, it was quite apparent that the committee to visit "The Library" was not a committee to visit the libraries of the Theological, Law, and Medical departments, because upon the committees severally charged with visiting those departments devolved the power and duty of visiting their Libraries; which could not then have been supposed to need two visiting committees, in each year. The library of the Law School is no more a part of "The Library," than Dane Hall is a part of Gore Hall.

The Treasurer, in his annual Statements of his accounts, has an account with "Library," which uniformly means the College library, and when a percentage was deducted from the receipts for tuition in the Law School, for "The Library," the Law School library never had any of the benefit of it. It was directly the reverse.

So far as I now recollect, the committee to visit the Library never undertook the duty of visiting the libraries of the Schools, but in some instances, how often I cannot say, sub-committees have been detailed for that purpose. Such a sub-committee probably visited the library of the Law School several times, saw the Librarian, might or might not have seen some of the Professors, and nothing more was heard about it. Whether the librarians of the day made written reports to the sub-committees before 1861, I have no knowledge. But in that year a sub-committee came, and finding it to be term time, the library in daily use, and so not presenting the order and neatness of the general library, and no report of the librarian ready, made a somewhat curt report to the general committee. As soon as the vacation came, the librarian hastened to make the desired report to the sub-committee, in which he estimated the loss of books for the year at one hundred volumes, adding, "Since a number of volumes reported missing at the last examination were found in their places, it may be expected that many of the missing volumes may be returned." But he concluded, that the means taken for the security of the library were insufficient, winding up that part of his report with the extravagant remark, "How the books can be best preserved and the working character of the library maintained, is a question of

some difficulty; but an immediate answer is called for, or the losses will soon render the question an idle one."[1]

Upon this report, the general committee appointed a special committee, which had an interview with the Professors, who stated the difficulties attending any other arrangement than that which had prevailed since the organization of the School, but asked the committee, if they could, to devise some plan for better security. The special committee made a report in which they expressed the opinion that further provision ought to be made for the security of the library. They said "Every special library requires special regulations. Perhaps the most frequent use of this library by students is in the preparation of their moot-court cases. For this purpose they must have entire freedom to range through the library, take down whatever book they choose, and consult it at their pleasure. This privilege cannot be abridged, and rules must be made to conform to this necessity. The learned Professors think that such freedom necessarily endangers the security of the books. Your Committee think otherwise, — provided proper regulations are made and enforced to meet the emergency. Such regulations, however, have not been made and enforced; and the surprise of your Committee is not that so many books are missing, but that so many remain." They recommended that the library, when open, should never be left without an attendant, whose duty it should be to keep it in order, and see that the regulations were enforced; that the text-books be called in as often as once within each year, and a thorough examination be made; that shelf-lists be immediately prepared which should exhibit an exact inventory of the library; that the responsibilities of the librarian be increased, and those of the janitor diminished; and that the Professors impress upon the minds of the students, practically as well as theoretically, the fact that the books are property, and that to take one surreptitiously was a dishonorable and an immoral act, — doubting whether, with present usages, that truth could be taught in any other way than by punishment, — all which was published, along with the report of the Committee on the Library.

The Faculty being clearly of opinion that the adoption of the

[1] Whether the suspicion of depredations which gave rise to this excited remark, was founded on fact, is not known. A subsequent examination rendered it doubtful.

first and fourth recommendations would cost more than would be saved, were not inclined, in the then state of the funds, to make the changes recommended; on the second and third, made such provisions as seemed suitable; and having, from time to time, for years previously, performed the duty recommended in the fifth, without punishing transgressors, made no change in that particular.

In the autumn of 1862, the Professors, in their report to the Committee of the Overseers appointed to visit the School, laid the whole matter before them, and received their emphatic approbation of the course pursued.

In the mean time, however, a sub-committtee of the Committee to Visit the Library that year, had come again. The librarian then reported to them that five volumes of those reported missing last year had been returned, — that the missing books for the year amounted to nineteen volumes, — that the recommendations that were made by the special committee "were found to involve a much greater expenditure than it would take to supply the missing volumes, and the financial condition of the School did not warrant a large outlay for the purpose of enforcing 'practically as well as theoretically' sound views on the rights of 'property';" and that the actual yearly loss of text-books was no larger than that of other libraries of the same circulation.

But the sub-committee, in their report, which was submitted to the Overseers in February, 1863, admitting that the loss shown during the year was not so great as the cost of providing additional supervision would have been, persisted in their strictures in relation to the management of the library on this point.

Deeming this hardly just to the Faculty and not quite decorous to the Committee appointed to visit the School, the Faculty, on the occasion of the next visit of that committee, reported upon the whole subject; suggesting a question respecting the jurisdiction of the Committee on the Library, as well as making a defence on merits. This report may be found in the Appendix. See note B. The Visiting Committee again sustained the course adopted, and it was understood would so report to the Overseers. The reports of this committee were not published, as were the reports of the sub-com-

mittee on the library, and I never saw their report which was presented in January, 1864, nor had any knowledge of its particular contents, until long afterwards. Under existing circumstances my modesty permits me to place it along with the report of the Professors in the Appendix. See note C. The sub-committee came not, after that, to my knowledge, and so that matter ended.

In the report of the special committee of 1861 (submitted in 1862), when they supposed that one hundred volumes had been lost during the last year, they say: "The number of books missing, large as it is, indicates a higher degree of moral principle among law students than young gentlemen pursuing their professional studies are commonly supposed to possess. It is safe to say, that even no theological library in the land could maintain its integrity, under similar circumstances."

In a report of the sub-committee of 1863 (submitted in January, 1864), when the librarian's report showed but five volumes missing during the year, the sub-committee "are glad to be able to say, that either the morals of the school or the management of its library, or both, have decidedly improved during the last academic year."

As there had been no very material change in regard to the management of the library, the morals of the students are entitled to the full benefit of the compliment; and the interesting problem is presented, — if, with one hundred books supposed to be stolen in one year, the morals of Law compare so favorably with those of Theology, what must be the relative condition of the two when Law loses only five volumes a year?

The means for the increase of the library are now ample. The income from the Bussey fund is greatly enlarged. The income from the Royall, Dane, and Foster funds, has been increased by the allowance of a greater interest by the college, and the contribution to the College library appears to have been abolished. See Appendix D.

The means are also sufficient to provide for its security, and the methods for its better preservation, to which the Visiting Committee of the present year seem to have referred, appear to be in full operation. The usage of the School, which for forty years gave the students free access to the books in the general library, — a privilege which the Professors deemed, if not es-

sential, highly valuable, and of which even the special committee, in 1862, said, "The privilege cannot be abridged, and rules must be made to conform to this necessity,"— has itself been made to conform to some other necessity, and the students are now fenced off from access to the books, except as they receive them from the hands of the librarian, or his assistants. They can therefore rest assured that their morals are secured thus far; and if a sufficient number of wash stands, with their appurtenances, shall be provided, the new additions may be preserved, to some extent, in such condition as to be agreeable to that class of the lovers of books, who think more of their covers than they do of their contents.

In relation to instruction in Pleading, had it been entirely omitted, it could hardly be charged as in any degree a disgrace to a Commonwealth, which by legislative enactment has peremptorily reduced the forms of personal actions at law to contract, tort, and replevin, — and in such actions abolished the whole system of pleas, replications, rejoinders, surrejoinders, rebutters, and surrebutters, and issues arising therefrom, — requiring a simple answer to the plaintiff's allegations, no further pleading being required after the answer, except by order of court.

Other States have gone still further, and amalgamated the pleadings in equity with those at law; informal statement on one side, and informal answer on the other, being the recognized procedure.

But the study of Pleading is not unimportant, and was not neglected. It formed part of the regular course, with Stephen and part of Chitty as text-books, and a reference to Stearns on Real Actions. Lectures were regularly given in the course, and, on request, instruction in that branch, at times when the topic was not in the order of the term. I may perhaps be permitted to say of it, that the instruction was given by one who had had some practical experience in that branch of the law. And with the tendencies of modern legislation it may be doubted whether "old fogies" of that description will not soon be scarce.

An attempt was made, also, to introduce drafts of declarations, but I was very soon convinced that a Professor, who gives out cases for drawing declarations, if any large number of the

students shall furnish drafts not conformed to the accredited precedents, will be likely to find that he has more occupation in determining how far a departure from those forms may extend, without subjecting the pleading to a special demurrer, than will be profitable to himself, or of great advantage to the students.

Recognized forms exist at the present day, covering almost all common cases in Pleading, and of other legal instruments, and it is safer to follow them where they exist, as every departure may give rise to a question whether the pleading or other instrument is sufficient, or what are its meaning and effect.

Very little of unusual matters of pleading can be taught by instruction through forms. It must be by teaching the principles which govern their construction.

If it is supposed that the young lawyer, rising to address the Court or jury will fail in the performance of his duty, because there are no cheers to encourage him, or that making one good point in his case, he cannot so well make another, having missed the applause which has invigorated him in a Moot-court, it is undoubtedly advisable to put an extinguisher upon the applause there. The administration of the School which came into existence in 1848, and found the custom in use among the students, did not deem the matter of sufficient importance to bestow much thought upon it, certainly did not conclude that it was pernicious.

But if this ought to be prohibited, there are other things deserving of consideration. The presence of his fellow-students in the Moot-court is an incentive to exertion, on the part of the counsel there, as well as their applause; and the question comes, if it be supposed that on appearing in court he may fail, because he lacks the applause to which he is accustomed, and that is therefore abolished, may it not be feared that he may fail as disastrously, when he is not only no longer sustained by the attendance which encouraged him in the Moot-court, but finds a new "sea of up-turned faces" greeting his first appearance in a new forum. In truth the danger lies here, and when applause is no longer permitted, ought not provision to be made so that he may have as much of the old surroundings as is possible. If a committee of the "old familiar faces," as large as a visiting committee of the Overseers, cannot be sent to surround the new-fledged lawyer in order to inspire his bosom with con-

fidence, and nerve him for his first struggle at the Bar; may it not be practicable at least, upon notice that a graduate is about to make his maiden speech, to order out a sub-committee to sit in his eye, and supply, thus far, the old stimulus; or may not an arrangement be made, by which a Professor shall be detailed to sit by the side of the judge, with a smile of encouragement, which is not always to be found upon the bench.

If there is any weight in the suggestion of the committee, the new temple should be as much like the old as may be practicable, and as the Moot-court cannot be made a Court of Justice, the latter should take the similitude of a Moot-court.

Really, if this suggestion did not come from a dignified source, it might provoke to mirth and laughter. But the subject must be quite too grave and solemn for that.

Let the Faculty, and the Corporation, and the Overseers, look to it.

APPENDIX.

NOTE A. See page 31.

The course of study announced in the Circular of the Law School for 1870–71, comprises several "Required studies," and eighteen "Elective studies;" and the "Subjects of instruction" during the Academic year 1870–71 include all of the required studies, and eleven of the elective.

Of the Degree it is said, — "The degree of Bachelor of Laws will be conferred upon students who shall pass satisfactory examinations in all the required subjects, and in at least seven of the elective subjects, after having been in the school not less than one year." But it is added, — "The seven required subjects" "are intended to occupy the student fully during one year; the seven elective subjects, which are further necessary for a degree, are intended to fill a second year."

The student may have his degree if he can pass examination at the end of a year. But as the seven required subjects are intended to occupy him fully during one year, and as "candidates for a degree who begin their studies in this school are expected to devote their first year to the required subjects," how is the student to be qualified to pass an examination, at the end of that time, in the seven elective studies, which are further necessary for a degree, and which are intended to fill a second year. Of course he cannot be expected to crowd the labors which are intended to fill two years into one.

The examination is to be "of a thorough and searching character." Of course it must be, if it is to give value to the degree. An examination which regularly turns by no one, but finds all the candidates qualified in the fourteen studies, is little better than a sham and a delusion, because it proves nothing, — somewhat nearer being almost a disgrace, than the practice of granting the degree, on time, without any examination, because in the last case there is no hollow pretence about it.

If, however, the student has studied the seven elective subjects before he enters the school, he may attain the honor at the end of his first year. But as "the seven required subjects are designed to be the beginning of the course," and "to serve as an introduction to the elective studies," he will reverse the order intended, and begin at the other end.

Equivalents may be accepted from those who have studied elsewhere, but what equivalent can be accepted for the required studies, which must be supposed to lie at the foundation of legal learning.

The practical operation of the rules would seem to be, that gentlemen who commence their studies out of the school, and begin at the wrong end, may present themselves for examination after having studied one year in the school, but those who resort to the school at the commencement of their studies, will not be expected to appear as candidates until the end of two years. Whether this is in the interest, either of the school, or of sound legal learning, I do not presume to judge.

Again, the Circular of 1870–71 specifies eleven elective studies. The student may elect seven of these. He may, of course, omit four of them, and is not required to be examined on those omitted. And as Jurisdiction and Procedure in Equity, Bailments, Agency, Negotiable Paper, Partnership, and Corporations, are found in the list, he may escape examination in any four of these six, which he pleases. Supposing the examination, therefore, to be "searching and thorough" so far as it extends, it may, at most, only show that the student has made a successful beginning in the study of the law, and he may know little of some of its most important topics.

Perhaps it may be found to deserve consideration, whether a regenerated Moot-court should not be held, to determine the question, — Can the degree, founded on such an examination, operate as conclusive evidence of the final redemption of the School from its fallen state?

NOTE B. See page 45.

REPORT OF THE PROFESSORS TO THE COMMITTEE OF OVERSEERS APPOINTED TO VISIT THE SCHOOL IN 1863.

To the Committee appointed by the Overseers of Harvard College to visit the Law School.

The Professors in that Department have the honor to report: —

That the School has continued during the year now closing under the same superintendence which has existed for several years past without any essential change in the mode of instruction.

Lectures have been delivered by the Royall Professor upon Pleading, Constitutional Law, Bailments, Corporations, and Equity Jurisprudence; by the Dane Professor upon Blackstone and Kent's Commentaries, the Law of Shipping, Marine, Fire, and Life Insurance, and International Law; and by the Bussey Professor upon the Law of Real Property, Arbitrament and Award, Criminal Law, the Domestic Relations, Wills and Administration, and Professional Ethics.

The course of Instruction adopted by the wisdom of their predecessors, after a large experience, is believed to be well adapted to the wants of the young men who desire to avail themselves of the advantages of the School, and the Professors have been slow to risk innovations. The instruction therefore is still carried on mainly by means of Lectures and Moot-courts, with an exemplification of the principles under consideration by cases propounded for solution. These, with a careful study of the text-books, and the Clubs formed by the students for mutual discussion, furnish full employment, even for the most studious.

Competition for prizes offered for Dissertations, while it undoubtedly tends to the acquisition of special knowledge respecting the subject under investigation, necessarily withdraws the student somewhat from the course of his general studies, and, except in a few cases, it may admit of question how far, upon the whole, the offer of prizes tends to the benefit of those who write for them.

In like manner the Professors have hesitated to make any essential change in the mode in which the students have access to the books in the Law Library, or in the means adopted for its security, notwithstanding the strictures which have been made and published upon that subject in the reports of the sub-committee of the Committee appointed to visit "the Library" — not the Law Library. The Professors are not disposed to raise a question upon the visitations of this sub-committee upon "the Library." They are pleased to receive from any quarter valuable suggestions in relation to the preservation of the Law Library. They may say, however, that there is a committee (the present committee) appointed for the express purpose of visiting the Law School, — its Library as well as all other of its Departments, — and they must express some surprise at the remarks which have been made upon the subject, in the reports alluded to, and to add, that the sub-committee could not have been fully aware of the probable results of their recommendations if they had been adopted. The increased expenses which would have been incurred if the measures recommended for the

security of the Law Library by the sub-committee in 1861 had been adopted, would have far exceeded the value of all the books lost during the year which followed, and, in the belief of the Professors, such measures would have tended rather to increase the losses than to diminish them. Ever since the foundation of the School, so far as the Professors are aware, the students have been permitted to have free access to the books; and this appears to be necessary in order to give them the advantages which they expect to derive from the use of them. It is one of the inducements to enter the School. It must be quite apparent to any one who considers the subject carefully, that with such use of the books, the Library cannot be placed under restrictions similar to those adopted in libraries which are resorted to merely for the purpose of taking out books, or for occasional limited perusal in the Library itself; and it must therefore from the nature of the case be exposed to greater dangers. The whole subject was fully discussed with the committee appointed to "visit the Law School" last year, and the course pursued, it was understood, had their unanimous approbation.

The report of the Librarian will show the condition of the of the Library for the year ending in July last, and tend to the correction of some errors in previous reports. He gave, it seems, somewhat more of attention to the security of the Library than his predecessors, and he says, "Students were in some cases detected in removing books without permission, and the lecture-room was found to be the avenue through which books find their way out of the building. Immemorial custom has made this course law, and it is quite difficult to check it. The course was to ascertain definitely the volume taken, and to allow an opportunity to return it, which in all cases was done."

But there is no reason to doubt that in the instances which the Librarian thus speaks of, the books would have been returned in good faith, even if they had been taken to the lecture-room, and thence to the student's room, without any record of them. It is not probable that there was one case among them, in which there was a design to pilfer, and it is mainly from cases of this last character that loss is sustained.

Notwithstanding all the care of the past year, it is undoubtedly true that if persons had been disposed to steal the books, they could have accomplished their object. And we may superadd, that without incurring an expense altogether out of proportion to the danger, or restricting the use of the Library in a manner greatly to diminish its usefulness, it is impossible that it should be otherwise.

The number of missing volumes, during the last Academic year, is five. The number during the previous year was nineteen, several of which were returned.

The sub-committee do not seem to have been aware that the books in the Law Library are not only stamped with the words "Harvard Law Library" on the back, but that such stamp is also placed upon several of the leaves of each volume, extending through the volume; and that this plan for the security of the Library was adopted many years since.

The Professors have the pleasure of stating that the very serious reduction of the number of students, occasioned by the war, no longer continues, although the attendance at the present time is hardly equal to the average attendance for several years prior to 1861; the whole number the present term being *one hundred and twenty-eight.*

JOEL PARKER, *Royall Professor.*
THEOPHILUS PARSONS, *Dane Professor.*
EMORY WASHBURN, *Bussey Professor.*

DANE HALL, *December* 36, 1863.

NOTE C. See page 46.

REPORT OF THE COMMITTEE APPOINTED TO VISIT THE LAW SCHOOL, TO THE OVERSEERS.

To the Honorable and Reverend Board of Overseers of Harvard College.

Your Committee appointed to visit the Law School respectfully report, that upon notice from the President of the College, they visited the Law School on the 30th of December last. Nearly every member of the Committee was present, and met the Professors of the School and conferred with them upon their duties, and the interests of the charge committed to them. While in Cambridge the committee attended a lecture by the Royall Professor, Judge Parker, to a large number of students, and were entirely satisfied that both the matter and manner of it, were admirably calculated to impress and improve the students who listened to it. The School seems now to be prosperous, and your Committee are satisfied with the prescribed course of study, and that the duties of the Professors are most ably and conscientiously discharged.

Our attention was called by the Faculty of the Law School to complaints made by a sub-committee of your Committee to visit the

Library, that books were lost from the Library of the Law School; and we examined the rules and methods adopted to regulate the use of the library, by the students. We are satisfied that every proper precaution was taken to prevent loss of books, and that no larger number was lost, than must always be expected, if books are used at all. Your Committee would deprecate exceedingly the imposition of any more or further restrictions upon the use of the Library, by the students. This subject was called to the attention of last year's Committee, and they were unanimously of opinion, that the strictures of the sub-committee were uncalled for, and so reported substantially to the Board of Overseers. Your Committee of this year were surprised that the sub-committee of the Library Committee should have insisted upon their strictures, against the unanimous opinion of the Faculty of the Law School, and of the Committee of your body appointed specially to visit that School. At any rate, your Committee are decidedly of opinion, that it is the duty of the Professors of the Law School to entirely disregard the strictures and advice of the sub-committee referred to, and adhere to the course they have adopted to regulate the use of the Law library by the students, and took occasion to express that opinion to the Professors.

The reports of the Faculty of the Law School, and of the Librarian of the Law Library, are herewith transmitted.

All which is respectfully submitted.

J. G. Abbott, *Chairman*,
in behalf of the Committee.

NOTE D. See page 46.

The share of the income from Mr. Bussey's estate, credited to the school in 1868–69, amounted to $6,543.01; in 1869–70 to $8,517.65. The Corporation allowed the school in 1868–69, for income from Mr. Royall's legacy, $575.91, from Mr. Dane's donation $1,087.50, and from Mr. Foster's legacy $218.98, instead of the sums heretofore stated as the income from those sources. The income from the Royall and Dane funds, accounted for in 1869–70, was somewhat less ($1,537.22), but the School appears, from the Treasurer's Statement, to have been delivered from the charge for the College library. It can afford, therefore, to expend $1,249.77 for advertising in 1868–69, and $651.69 in the last year, — to add to

the salaries of its Professors, — increase its library, — and provide for a large corps of Lecturers.

With these enlarged means, and having escaped from that mischievous degree, by which it was doing something every year to injure the profession, its glories in the future must of course eclipse all its antecedents.

But it is rather unseemly for the worshipper of the rising sun, at the very time when he pays his morning devotions, to kick at him because he did not shine with equal lustre when he set the preceding evening.